

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
APRIL 5, 2012**

The Bismarck Board of Adjustment met on April 5, 2012 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Board members present were Dean Conrad, Ken Heier, Jennifer Clark, and Jeff Ubl.

Members absent were Michael Marback and Blair Ihmels.

Staff members present were Ray Ziegler (Building Official), Kim Lee (Planning Division Manager), and Kim Riepl (Office Assistant).

Others present were Montie Galt, Bismarck.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Conrad to appoint Ken Heier as Acting Chair in the absence of Michael Marback, Chair and Blair Ihmels, Vice-Chair. With all members voting in favor, the motion was approved.

**MINUTES**

Acting Chair Heier asked for consideration of the August 4, 2011 minutes.

**MOTION:** A motion was made by Ms. Clark and seconded by Mr. Conrad to approve the minutes of the August 4, 2011 meeting as presented. With all members voting in favor, the minutes were approved.

**VARIANCE – MONTIE GALT – 6714 NORTHSTAR ACRES ROAD**

Acting Chair Heier indicated Mr. Galt was requesting a variance to exceed the maximum allowable accessory building area to construct a detached 36' x 60' storage building. He invited Mr. Galt to provide comments.

Mr. Galt explained his property is just less than 3 acres in size, all of which is developed and well-maintained. He stated the amount of equipment necessary to maintain the property requires more than 1,800 square feet of storage space. He wishes to store all the equipment inside for several reasons:

1. To prevent weatherization of the equipment. It is expensive equipment and he wishes to keep it in good condition to avoid having to replace items unnecessarily, and tarping is costly and unsightly.
2. Maintain a neat appearance of the property. Having items sitting outside contributes to the property looking messy and cluttered, which he wishes to avoid.
3. Safety issues. Equipment stored outside invites vandalism and theft.

Mr. Galt explained the amount of square footage requested for the building is storage area only. He will not operate any type of business from the building, now or in the future.

Mr. Conrad asked if any comments had been received from neighbors. Ms. Lee replied two neighboring property owners had provided comment, both in favor of granting the variance.

Mr. Galt added he possessed a letter from a neighboring couple who offered their support of his request, which he gave to staff to file.

Several comments by Board members followed, recognizing the neat appearance of Mr. Galt's property and the pride he shows in maintaining it.

Ms. Clark asked if there were any instances of similar variances in this neighborhood for similar construction. Ms. Lee replied there were none that she was aware of, but went on to provide additional information that may be relevant. She stated the (Burleigh) County Planning Commission had asked Planning staff to put together information to allow increased accessory building sizes in the County. There will be a public hearing on that language next week Wednesday (at the County Planning Commission meeting April 11<sup>th</sup>). Staff will be introducing an accessory building ordinance at the April meeting (of the City Planning and Zoning Commission). As proposed, the maximum accessory building size allowed on a property the size of Mr. Galt's would increase from 1,800 square feet to 2,400 square feet. A public hearing would likely be held at the May meeting, and if there were no issues with it, be forwarded to the (Bismarck) City Commission for consideration in June.

The following findings were provided:

1. The need for a variance may be based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

**MOTION:** A motion was made by Mr. Ubl to approve the request for the variance to increase the maximum allowable accessory building size from 1,800 square feet to 2,160 square feet for the property at 6714 Northstar Acres Road. The motion was seconded by Mr. Conrad, and discussion followed at the request of Ms. Clark.

*Discussion: Ms. Clark began by asking Mr. Galt if he was the original owner of the property. He replied he has owned it since 1992, but has done all the improvements on the property. Ms. Clark asked if he would be willing to simply wait for a change to the Ordinance and he replied fearing a delay in construction of possibly a year if he did that, as contractors in the area are very busy. Ms. Clark then asked if it may be an alternative to add on to his attached garage, but Mr. Galt replied it is too close to the road.*

*Mr. Heier inquired as to Mr. Galt's plans for the 10' x 12' yard shed on the property, which effectively adds 120 square feet to the overall square footage of accessory building on the property. Mr. Galt replied he would prefer to keep it as a garden shed if possible, but would have no problem tearing it down if necessary.*

*Ms. Clark asked Mr. Galt, if, in the event the Ordinance was revised to allow up to 2,400 square feet, would he revise his plans to construct a bigger building and he replied he would not, as what he has requested is all he needs.*

**CALL FOR VOTE:** Acting Chair Heier called for a vote on the motion made by Mr. Ubl and seconded by Mr. Conrad to approve the request for the variance to increase the maximum allowable accessory building size to allow for the construction of a detached 36' x 60' building at 6714 Northstar Acres Road. With all members present voting in favor, the motion to approve the request for the variance was approved.

#### **VARIANCE – KEVIN FISCHER – 924 & 928 BAFFIN LOOP**

Acting Chair Heier noted neither the applicant nor a representative for the applicant was present at the meeting.

General discussion took place regarding the topography of the area. It was agreed there was a steep slope in the rear yards of the lots, presenting a construction challenge. Ms. Clark asked staff if Mr. Fischer was the developer of the plat and Ms. Lee stated he was not, that he had purchased the lots. Questions of setbacks arose, and Ms. Lee noted setback measurement begins at the edge of the access easement as the property is located on a private drive. She also pointed out the setbacks for the homes on the lots to the west were indicated on the site plan contained in the packet.

Ms. Clark then inquired as to the feasibility of preparing the lots to eliminate the steep slope for construction purposes. Mr. Ziegler replied it may require redesigning the entire home to make it more accommodating to the lot, as well as hauling in a large amount of fill and having to get compaction testing done, and possibly increase the need for spread footings. All these things would substantially increase the costs of construction.

Mr. Conrad questioned whether any comments had been received and Ms. Lee stated no comments had been received.

The following findings were provided:

1. The need for a variance may be based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10 zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

**MOTION:** A motion was made by Mr. Ubl to approve the request for the variance to reduce the front yard setback from 25-feet to 22-feet based on the topographical hardship of the site. The motion was seconded by Mr. Conrad for further discussion.

*Discussion: Mr. Conrad expressed his opinion that it was significant that the applicant or a representative of the applicant was not in attendance and he would like the item continued until next month to allow the applicant to attend the meeting.*

*Mr. Ubl commented he felt there to be less and less variance requests that truly involve a (topographical) hardship as is the case, in his opinion, with this request. He further stated he understands the initial reaction to be recommendation of building a smaller home (to suit the lot), however, he believes there to be more that factors into that, as well.*

*Staff indicated surprise at Mr. Fischer's absence as he has been in contact with the Planning office and Mr. Conrad added Mr. Fischer was very busy when he visited the site.*

*Ms. Clark stated she would find it very valuable to hear Mr. Fischer's comments on the request.*

Mr. Ubl withdrew his original motion to approve the request for a variance to reduce the front yard setback from 25-feet to 22-feet. Mr. Conrad then withdrew his second on that motion.

**MOTION:** A motion was made by Mr. Ubl to continue the consideration of the request for the variance to reduce the front yard setback from 25-feet to 20-feet to the next meeting of the Board of Adjustment. The motion was seconded by Ms. Clark and with all members present voting in favor, the item was continued.

Acting Chair Heier indicated the three remaining items on the agenda, noting they were all discussion items. He announced discussion regarding accessory building language in the Ordinance, discussion regarding Board of Adjustment fees increase, and discussion regarding administrative variances would be continued to the next meeting due to the absence of the Chair and Vice Chair at this meeting

## **OTHER BUSINESS**


Ms. Lee stated there would likely be a draft ordinance regarding accessory building sizes available to view at the next meeting for comments.

## **ADJOURNMENT**

There being no further business, Acting Chair Heier called for a motion to adjourn the meeting.

**MOTION:** A motion was made by Mr. Conrad to adjourn the meeting of the Board of Adjustment. The motion was seconded by Mr. Ubl and with all members present voting in favor, the April meeting of the Board of Adjustment was adjourned to meet again on May 3, 2012.

Respectfully Submitted,



Kim Riepl  
Recording Secretary

APPROVED:



Michael Marback, Chair